



What FTA's drug and alcohol forum says about reasonable suspicion tests, and more

by Brandon Garrison

The Federal Transit Administration (FTA) Drug and Alcohol Testing Web site provides an open forum for anyone with questions about substance use in the transit business.

The forum features four discussion groups:

- regulatory questions,
- seminars,
- compliance audits, and
- Drug & Alcohol Management Information System (DAMIS) reporting.

You may ask questions of FTA Drug and Alcohol Project employees on a moderated forum by completing a free online registration. Questions are usually answered within a few days of its posting. Here are some questions that have been answered on the forum about federal drug-testing policies.

What role do customer complaints play in determining whether to perform a reasonable suspicion drug test?

Scenario: A customer has said they think one of your drivers is on drugs. Is this an acceptable reason to give the driver a drug test?

Response from FTA's Mike

Reddington: The official word comes from federal regulations 49 CFR Part 655.43 (b) which states "An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations."

A customer complaint is, in itself, not a valid reason for requiring a reasonable suspicion test, however it may be cause for a supervisor trained in making reasonable suspicion determinations to interview or discuss with the employee the complaint or incident. In the course of the interview or discussion, if the supervisor determined that reasonable suspicion existed based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee, the supervisor would be obligated to require a reasonable suspicion test.

Should you perform a pre-employment drug test on an employee who has been on extended leave from work and absent from the random testing pool for several months?

Scenario: An employee has returned from a four-week leave to perform safety-sensitive duties and wasn't properly added to the random testing pool, and as a result hasn't been in the testing pool for months. Is this employee required to take a pre-employment drug test?

Response from FTA's Eve Rutyna:

According to §655.41(2)(d), when a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified

negative result.

If the employee was out of the random pool for more than 90 days—and it appears that they were if it was "several months"—they must take a pre-employment drug test. As you noted, they should also be put back in the random pool immediately.

If an employee quits after failing a drug test and then wants to return, can he or she avoid a follow-up test by waiting for a long period of time before returning?

Scenario: One of your employees quits after failing a drug test but wishes to return. Normally, they must meet with a substance abuse professional and take a return-to-duty test. However, is there any time period where the employee could get out of having to take a follow-up test?

Response from FTA's Mike

Reddington: Federal regulations 49 CFR Parts 40 and 655 place no time restrictions on the follow-up testing requirement.

Do you have questions regarding Kansas's regulations?

The answers above are in accordance with federal regulation, but if you have any questions specific to the Kansas Transit Drug and Alcohol Testing Program, contact Sandy Flickinger, KDOT Drug and Alcohol Testing Coordinator, at (785) 368-7091 or e-mail sandyf@ksdot.org.

Visit the forum yourself

You can read postings or post a question yourself at FTA's Drug and Alcohol Testing Web site. Go to <http://transit-safety.volpe.dot.gov/Safety/BBS/default.asp> ▲